

## Health and Human Services

342.7003-1

are anticipated, the Contracting Officer shall take immediate action to protect the Government's rights under the contract. The Contracting Officer shall notify appropriate officials of problems that cannot be resolved within contract limitations and whenever the contractor is not meeting contract or program objectives. The notification shall include a statement of corrective actions that the Contracting Officer is taking.

### **342.7002 Procedures to be followed when a contractor fails to perform.**

(a) The Contracting Officer shall initiate immediate action to protect the Government's rights whenever the contractor fails to comply with either the delivery or reporting terms of the contract. Compliance with the reporting terms includes those reports the contractor is required to submit directly to the payment office. The payment office shall notify the Contracting Officer promptly when the contractor does not submit such a report on time.

(b) When the contract contains a termination for default clause, the contractor's failure to submit any report, perform services, or deliver work when required by the contract is considered a default in performance. The Contracting Officer shall immediately issue a formal 10-day cure notice pursuant to *FAR 49.607*. The notice shall include a statement to the effect that payments will be withheld if the default is not cured within the time period specified in the notice or if the default is not determined to be excusable.

(1) If the default is cured or is determined to be excusable, the Contracting Officer shall not initiate the withholding action.

(2) If the default is not determined to be excusable or a response is not received within the allotted time, the Contracting Officer shall initiate withholding action on all contract payments and shall determine whether termination for default or other action would be in the best interest of the Government.

(c) When the contract does not contain a termination for default clause, the Contracting Officer shall consider a contractor's failure to submit any required report, perform services, or de-

liver work when required by the contract a failure to perform. The Contracting Officer shall immediately issue a written notice to the contractor that: specifies the failure, and provides a 10-day period (or longer period if the Contracting Officer deems it necessary) within which the contractor shall either cure the failure or provide reasons for an excusable delay. The notice shall include a statement to the effect that payments will be withheld, if the default is not cured within the time period specified in the notice or if the default is not determined to be excusable.

(1) If the contractor cures the failure or the Contracting Officer determines it to be excusable, the Contracting Officer shall not initiate the withholding action.

(2) If the Contracting Officer does not determine the failure excusable or the contractor does not provide a response within the allotted time, the Contracting Officer shall initiate withholding action on all contract payments and shall determine whether termination for convenience or other action would be in the best interest of the Government.

(d) The Contracting Officer shall consult *FAR subpart 49.4* for further guidance before taking any of the actions described in this section.

### **342.7003 Withholding of contract payments.**

#### **342.7003-1 Solicitation provisions and contract clauses.**

(a) The Contracting Officer shall insert the clause in *352.242-73*, Withholding of Contract Payments, and the clause in *FAR 52.249-14*, Excusable Delays, in solicitations and contracts when a cost-reimbursement, time-and-materials, or labor-hour contract is contemplated.

(b) The Contracting Officer shall insert the clause in *352.242-74*, Final Decisions on Audit Findings, in solicitations and contracts when a cost-reimbursement contract is contemplated, except for those contracts with:

(1) A foreign government or agency of that government; or

(2) An international organization or a subsidiary body of that organization that the HCA determines would not be appropriate.